

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

IVAN DEJESUS VALTI GALVAN,

Plaintiff,

v.

V. MILASICH,

Defendant.

Case No. 1:22-cv-00974-SAB (PC)

ORDER DIRECTING CLERK OF COURT  
TO ASSIGN A DISTRICT JUDGE TO THIS  
ACTION

FINDINGS AND RECOMMENDATION  
RECOMMENDING DISMISSAL OF THE  
ACTION

(ECF No. 12)

Plaintiff Ivan DeJesus Valti Galvan is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's first amended complaint, filed September 12, 2022.

**I.**

**SCREENING REQUIREMENT**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that "fail[] to state a claim on which relief may be granted," or that "seek[] monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B); see also 28 U.S.C. § 1915A(b).

1 A complaint must contain “a short and plain statement of the claim showing that the  
 2 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
 3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
 4 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
 5 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate  
 6 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.  
 7 Williams, 297 F.3d 930, 934 (9th Cir. 2002).

8 Prisoners proceeding *pro se* in civil rights actions are entitled to have their pleadings  
 9 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d  
 10 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be  
 11 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer  
 12 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss  
 13 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant  
 14 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s  
 15 liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572  
 16 F.3d at 969.

## 17 II.

### 18 SUMMARY OF ALLEGATIONS

19 The Court accepts Plaintiff’s allegations in his complaint as true *only* for the purpose of  
 20 the screening requirement under 28 U.S.C. § 1915.

21 V. Milavich violated Plaintiff’s rights under the Eighth Amendment when he caused the  
 22 physical injury to him which required sutures and staples to close the scalp laceration. When  
 23 Defendant Milavich was interviewed by prison staff he admitted that he caused the injury to  
 24 Plaintiff.

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### III.

#### DISCUSSION

##### A. Deliberate Indifference to Safety

The Constitution does not mandate comfortable prisons, but neither does it permit inhumane ones. See Farmer v. Brennan, 511 U.S. 825, 832 (1994).

The treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment. See Helling v. McKinney, 509 U.S. 25, 31 (1993). In its prohibition of “cruel and unusual punishment,” the Eighth Amendment places restraints on prison officials, who may not, for example, use excessive force against prisoners. See Hudson v. McMillian, 503 U.S. 1, 6-7 (1992). The Amendment also imposes duties on these officials, who must provide all prisoners with the basic necessities of life such as food, clothing, shelter, sanitation, medical care and personal safety. See Farmer, 511 U.S. at 832. A prison official violates the Eighth Amendment when two requirements are met: (1) the deprivation alleged must be, objectively, sufficiently serious, Farmer, 511 U.S. at 834 (citing Wilson v. Seiter, 501 U.S. 294, 298 (1991)), and (2) the prison official possesses a sufficiently culpable state of mind, id. (citing Wilson, 501 U.S. at 297).

Neither negligence nor gross negligence will constitute deliberate indifference. See Farmer, 511 U.S. at 835-37 & n.4. A prison official cannot be held liable under the Eighth Amendment for denying a prisoner humane conditions of confinement unless the standard for criminal recklessness is met, that is, the official knows of and disregards an excessive risk to inmate health or safety. Id. at 837.

In the working conditions context, the Eighth Amendment is implicated only when a prison employee alleges that a prison official compelled him to “perform physical labor which [was] beyond [his] strength, endanger[ed his life] or health, or cause[d] undue pain.” Morgan, 465 F.3d at 1045, quoting Berry v. Bunnell, 39 F.3d 1056 (9th Cir.1994). Resolution of an Eighth Amendment claim entails inquiry into the official's state of mind. Prison officials are liable only if they were deliberately indifferent to a substantial risk of serious harm. Farmer, 511 U.S. at 837 (“the official must both be aware of the facts from which the inference could be

drawn that a substantial risk of harm exists, and he must also draw the indifference”); see Wilson, 501 U.S. at 298–99, 302–03 (the official must actually know of the risk yet fail to take reasonable measures to ensure the prisoner’s safety); see also LeMaire v. Mass, 12 F.3d 1444 (9th Cir.1993). Even “[i]f a prison official should have been aware of the risk, but was not, then the official has not violated the Eighth Amendment, no matter how severe the risk.” Farmer, 511 U.S. at 834. Although the defendant's conduct need not have been undertaken for the very purpose of causing harm before it violates the constitution, a “sufficiently culpable state of mind” requires that the conduct involve more than mere negligence. Id. at 837, 847 (nothing less than recklessness in the criminal sense, that is, subjective disregard of a risk of harm of which the actor is actually aware, satisfies the “deliberate indifference” element of an Eighth Amendment claim). If the risk of harm was obvious, the trier of fact may infer that a defendant knew of the risk, but obviousness per se will not impart knowledge as a matter of law. Id. at 840–42.

Here, Plaintiff has alleged nothing more than negligence with regard to any actions taken by Defendant V. Milasich. There are no factual allegations which plausibly suggest that V. Milasich acted with deliberate indifference to the safety of Plaintiff. Accordingly, Plaintiff fails to state a cognizable claim for relief.

**B. California Department of Corrections and Rehabilitation (CDCR)**

“The Eleventh Amendment bars suits for money damages in federal court against a state, its agencies, and state officials acting in their official capacities.” Aholelei v. Dep't of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007).

Indeed, the Eleventh Amendment prohibits federal courts from hearing a Section 1983 lawsuit in which damages or injunctive relief is sought against a state, its agencies (such as CDCR) or individual prisons, absent “a waiver by the state or a valid congressional override....” Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). “The Eleventh Amendment bars suits which seek either damages or injunctive relief against a state, ‘an arm of the state,’ its instrumentalities, or its agencies.” See Fireman's Fund Ins. Co. v.

1 City of Lodi, Cal., 302 F.3d 928, 957 n.28 (9th Cir. 2002) (internal quotation and citations  
2 omitted)

3 “The State of California has not waived its Eleventh Amendment immunity with respect  
4 to claims brought under § 1983 in federal court....” Dittman, 191 F.3d at 1025–  
5 26 (citing Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 241 (1985)); see also Brown v. Cal.  
6 Dep’t. of Corrs., 554 F.3d 747, 752 (9th Cir. 2009) (finding California Department of Corrections  
7 and California Board of Prison Terms entitled to Eleventh Amendment immunity).

8 Plaintiff cannot seek liability against CDCR as it is a state agency and is immune from  
9 suit under the Eleventh Amendment. See Will v. Michigan Dep’t of State Police, 491 U.S. 58, 66  
10 (1989) (“Section 1983 provides a federal forum to remedy many deprivations of civil liberties,  
11 but it does not provide a federal forum for litigants who seek a remedy against a State for alleged  
12 deprivations of civil liberties.”); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100  
13 (1984) (holding that Eleventh Amendment immunity extends to state agencies.)

#### 14 **C. Further Leave to Amend**

15 Leave to amend should be granted if it appears possible that the defects in the complaint  
16 could be corrected, especially if a plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31  
17 (9th Cir. 2000) (en banc); Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se  
18 litigant must be given leave to amend his or her complaint, and some notice of its deficiencies,  
19 unless it is absolutely clear that the deficiencies of the complaint could not be cured by  
20 amendment.” (citing Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987))). However, if, after  
21 careful consideration, it is clear that a complaint cannot be cured by amendment, the court may  
22 dismiss without leave to amend. Cato, 70 F.3d at 1005-06.

23 The Court finds that, as set forth above, the first amended complaint fails to state a claim  
24 upon which relief may be granted. Despite being given an opportunity to amend the complaint,  
25 Plaintiff’s first amended complaint contains even less facts than those presented in the original  
26 complaint. The Court therefore concludes that Plaintiff has no further facts to allege and is  
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1 convinced that furth Based on the foregoing, it is HEREBY ORDERED that the Clerk of Court  
2 shall randomly assign a District Judge to this action.

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4 **IV.**

5 **ORDER AND RECOMMENDATION**

6 Based on the foregoing, it is HEREBY ORDERED that the Clerk of Court is directed to  
7 randomly assign a District Judge to this action.

8 Further, it is HEREBY RECOMMENDED that this action be dismissed, without leave to  
9 amend, for failure to state a cognizable claim for relief.

10 This Findings and Recommendation will be submitted to the United States District Judge  
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14)**  
12 **days** after being served with this Findings and Recommendation, Plaintiff may file written  
13 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
14 Findings and Recommendation." Plaintiff is advised that failure to file objections within the  
15 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,  
16 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

17 IT IS SO ORDERED.

18 Dated: **September 16, 2022**

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UNITED STATES MAGISTRATE JUDGE